

# DECLARATION AND POWER OF ATTORNEY

As a below-named inventor, I hereby declare that:

My residence, post office address, and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

## RESPONDING TO REQUESTS FOR DATA

(Title of Invention)

the specification of which:  
(check one)

\_\_\_\_\_ is attached hereto.

X was filed on April 14, 2000

Application Serial No. 09/550,306

and was amended by \_\_\_\_\_  
(if applicable)

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose to the Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, Section 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior Foreign Application(s)

Priority Claimed

| <u>Number</u> | <u>Country</u> | <u>Filing Date</u> | <u>Yes</u> | <u>No</u> |
|---------------|----------------|--------------------|------------|-----------|
| _____         | _____          | _____              | _____      | _____     |
| _____         | _____          | _____              | _____      | _____     |

I hereby claim the benefit under Title 35, United States Code, Section 120 of any United States Application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose to the Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application:

| <u>Application Serial No.</u> | <u>Filing Date</u> | <u>Status</u> |
|-------------------------------|--------------------|---------------|
| _____                         | _____              | _____         |
| _____                         | _____              | _____         |
| _____                         | _____              | _____         |

And I hereby appoint William E. Pelton (Reg. No. 25702), Donald S. Dowden (Reg. No. 20701), Ivan S. Kavrukov (Reg. No. 25161), Thomas F. Moran (Reg. No. 16579), Christopher C. Dunham (Reg. No. 22031); Norman H. Zivin (Reg. No. 25385), John P. White (Reg. No. 28678); Thomas G. Carulli (Reg. No. 30616); Robert D. Katz (Reg. No. 30141); and Peter J. Phillips (Reg. No. 29691) and each of them, all c/o Cooper & Dunham of 1185 Avenue of the Americas, New York, New York 10036 (Tel. 212 278-0400), my attorneys, each with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, to transact all business in the Patent and Trademark Office connected herewith and to file any International Applications which are based thereon under the provisions of the Patent Cooperation Treaty.

Please address all communications, and direct all telephone calls, regarding this application to:

William E. Pelton Reg. No. 25,702  
Cooper & Dunham LLP  
1185 Avenue of the Americas  
New York, New York 10036  
Tel. (212) 278-0400

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or first joint inventor Ted Richards

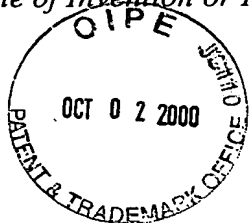
Inventor's signature Ted Richards  
Citizenship United States Date of signature 9-24-2000  
Residence Los Gatos, California  
Post Office Address 574 University Avenue, Los Gatos, California 95032

Applicant or Patentee: Ted Richards

Serial or Patent No.: 09/550,306

Filed or Issued: April 14, 2000

Title of Invention or Patent: RESPONDING TO REQUESTS FOR DATA



**VERIFIED STATEMENT (DECLARATION) CLAIMING  
SMALL ENTITY STATUS UNDER 37 C.F.R. §1.9(f)  
AND §1.27(c) - SMALL BUSINESS CONCERN**

I hereby declare that I am:

           the owner of the small business concern identified below.

  X   an official of the small business concern empowered to act on behalf of the concern identified below:

Name of Concern: audiohighway.com

Address of Concern: 20300 Stevens Creek Blvd., Cupertino, California 95014

I hereby declare that the above identified small business concern qualifies as a small business concern as defined in 13 C.F.R. §121.3-18, reproduced in 37 C.F.R. §1.9(d), for purposes of paying reduced fees under 35 U.S.C. §41(a) and §41(b), in that the number of employees of the concern, including those of its affiliates, does not exceed five hundred (500) persons. For purposes of this verified statement, the number of employees of the business concern is the average number, over the previous fiscal year, of the persons employed by the business concern on a full-time, part-time, or temporary basis during each pay period of the fiscal year, and concerns are affiliates of each other when, either directly or indirectly, one concern controls or has power to control the other, or a third party or parties controls or has power to control both.

I hereby declare that rights under contract or law have been conveyed to and remain with the small business concern identified above with regard to the invention entitled

RESPONDING TO REQUESTS FOR DATA described in:

           the specification filed herewith

  X   application serial no. 09/550,306 filed April 14, 2000 Patent No.            issued           

If the rights held by the above identified small business concern are not exclusive, each individual, concern or organization having rights to the invention is listed below<sup>a</sup> and no rights to the invention are held by any person, other than the inventor, who could not qualify as an independent inventor under 37 C.F.R. §1.9(c)<sup>b</sup>, any concern which could not qualify as a small business concern under 37 C.F.R. §1.9(d)<sup>b</sup> or as a nonprofit organization under 37 C.F.R. §1.9(e)<sup>b</sup>.

Name: None

Address:           

           Individual   X   Small Business Concern            Nonprofit Organization

<sup>a</sup> NOTE: Separate verified statements are required for each named person, concern, or organization having rights to the invention averring to their status as small entities. 37 C.F.R. §1.27.

(c) An independent inventor as used in this chapter means any inventor who (1) has not assigned, granted, conveyed, or licensed, and (2) is under no obligation under contract or law to assign, grant, convey, or license, any rights in the invention to any person who could not likewise be classified as an independent inventor if that person had made the invention, or to any concern which would not qualify as a small business concern or a nonprofit organization under this section.

(d) A small business concern as used in this chapter means any business concern as defined by the Small Business Administration in 13 C.F.R. §121.3-18, published on September 30, 1982 at 47 FR 43273. For the convenience of the users of these regulations, that definition states:

§121.3-18 Definition of small business for paying reduced patent fees under Title 35, U.S. Code.

(a) Pursuant to Pub. L. 97-247, a small business concern for purposes of paying reduced fees under 35 U.S. Code 41(a) and (b) to the Patent and Trademark Office means any business concern (1) whose number of employees, including those of its affiliates, does not exceed 500 persons and (2) which has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey or license, any rights in the invention to any person who could not be classified as an independent inventor if that person had made the invention, or to any concern which would not qualify as a small business concern or a nonprofit organization under this section. For the purpose of this section concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. The number of employees of the business concern is the average over the fiscal year of the persons employed during each of the pay periods of the fiscal year. Employees are those persons employed on a full-time, part-time or temporary basis during the previous fiscal year of the concern.

(b) If the Patent and Trademark Office determines that a concern is not eligible as a small business concern within this section, the concern shall have a right to appeal that determination to the Small Business Administration. The Patent and Trademark Office shall transmit its written decision and the pertinent size determination file to the SBA in the event of such adverse determination and size appeal. Such appeals by concerns should be submitted to the SBA at 1441 L. Street, N.W., Washington, D.C. 20416 (Attention: SBA Office of General Counsel). The appeal should state the basis upon which it is claimed that the Patent and Trademark Office initial size determination on the concern was in error; and the facts and arguments supporting the concern's claimed status as a small business concern under this section.

(e) A nonprofit organization as used in this chapter means (1) a university or other institution of higher education located in any country; (2) an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)); (3) any nonprofit scientific or educational organization qualified under a nonprofit organization statute of a state of this country (35 U.S.C. 201(i)); or (4) any nonprofit organization located in a foreign country which would qualify as a nonprofit organization under paragraphs (e)(2) or (3) of this section if it were located in this country.

## 37 C.F.R. §1.28(b)

(b) Once status as a small entity has been established in an application or patent, fees as a small entity may thereafter be paid in that application or patent without regard to a change in status until the issue fee is due or any maintenance fee is due. Notification of any change in status resulting in loss of entitlement to small entity status must be filed in the application or patent prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate pursuant to §1.9 of this part. The notification of change in status may be signed by the applicant, any person authorized to sign on behalf of the assignee, or an attorney or agent of record or acting in a representative capacity pursuant to §1.34(a) of this part.

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. 37 C.F.R. §1.28(b)°.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Name of Person Signing: Nathan Schulhof

Title In Organization: President

Address: c/o audiohighway.com, 20300 Stevens Creek Blvd., Cupertino, California 95014

Signature: X

N.M. Schulhof

Date of Signature: X

9/24/2000